

I. INTRODUCTION

1. This Settlement Agreement and Covenant Not to Sue (“Settlement Agreement”) is made and entered into by and between the United States on behalf of the Environmental Protection Agency (“EPA”) and the Purchaser, City of Kalamazoo Brownfield Redevelopment Authority (collectively the “Parties”).

2. This Settlement Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675, and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. This Settlement Agreement addresses a property referred to as the Panelyte Property, a former industrial property located in Kalamazoo, Michigan. The Purchaser desires to obtain title to the Panelyte Property in order to further redevelopment of the Panelyte Property, and surrounding areas.

4. The Parties agree to undertake all actions required by the terms and conditions of this Settlement Agreement. The purpose of this Settlement Agreement is to settle and resolve, subject to reservations and limitations contained in Sections IX, X, XI, and XII, the potential liability of Purchaser for Existing Contamination at the Panelyte Property which would otherwise result from Purchaser becoming the owner of the Panelyte Property.

5. The Parties agree that Purchaser’s entry into this Settlement Agreement, and the actions undertaken by Purchaser in accordance with the Settlement Agreement, do not constitute an admission of any liability by Purchaser.

6. The resolution of this potential liability, in exchange for provision by Purchaser to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Existing Contamination” shall mean:

- a. any hazardous substances, pollutants, or contaminants present or existing on or under the Panelyte Property as of the Effective Date;
- b. any hazardous substances, pollutants, or contaminants that migrated from the Panelyte Property prior to the Effective Date; and
- c. any hazardous substances, pollutants, or contaminants presently at the Site that migrate onto or under or from the Panelyte Property after the Effective Date.

“National Priorities List” or “NPL” shall mean that list of contaminated properties established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

“Operable Unit 1” or “OU1” shall mean that portion of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, including or adjacent to Portage Creek, used to dispose of papermaking wastes, including hazardous substances, from paper mills referred to as the Bryant Mill and/or Monarch Mill, and certain nearby areas to which hazardous substances and/or pollutants or contaminants from those paper mills have come to be located.

“Panelyte Property” shall mean the property commonly referred to as the Panelyte site, a property located at 2403 South Burdick in Kalamazoo, Kalamazoo County, Michigan, and more fully described Exhibit 1.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

“Parties” shall mean the United States and Purchaser.

“Purchaser” shall mean the City of Kalamazoo Brownfield Redevelopment Authority formed under the authority of the Michigan Brownfield Redevelopment Financing Act (Act 381 of 1986), MCL 125.2651 *et seq.* ***This requires elaboration - is KBRA a department of the City? Independent authority?***

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent and all Exhibits attached hereto. In the event of conflict between this Settlement Agreement and any Exhibit, the Settlement Agreement shall control.

“Site” shall mean the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, which is included on the NPL. The Site includes several former paper mills, areas used to dispose of wastes from papermaking operations from those mills and all areas to which hazardous substances and/or pollutants or contaminants from those mills have come to be located. OU1 is managed by EPA as part the Site.

“State” shall mean the State of Michigan.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

III. STATEMENT OF FACTS

8. The Panelyte Property is located at 2403 South Burdick in Kalamazoo, Kalamazoo County, Michigan.

9. Various industrial operations occurred in the past on the Panelyte Property, including but not limited to the production of laminated paper products and laminated surfacing materials. As a result of those activities, the Panelyte Property became contaminated with hazardous substances, as that term is defined by 42 U.S.C. § 9601(14). The Panelyte Property is currently included on EPA’s list of contaminated properties contained in the CERCLA Information System. The Panelyte Property is located adjacent to OU1. However, the Panelyte Property is not on the NPL.

10. In 1990 EPA conducted a removal response action at the Panelyte Property. EPA conducted this removal pursuant to CERCLA in order to respond to the release or threatened release of polychlorinated biphenyls (PCBs) resulting from transformer leaks.

11. OU1 is contaminated with PCBs resulting from papermaking operations which previously occurred at two paper mills. Some of the PCB contamination from those papermaking operations has come to be located on real property located in the Panelyte Property.

12. The Panelyte Property and OU1 are located adjacent to Portage Creek, which is a tributary of the Kalamazoo River. The Bryant Mill Pond was an impoundment on Portage Creek located adjacent to and on the Panelyte Property and OU1. Beginning in 1998, EPA conducted a removal response action, commonly referred to as the Bryant Mill Pond removal, to respond to certain threats posed by the release or threatened release of PCBs at or from OU1 and the Panelyte Property. In this removal, EPA excavated and disposed of some of the papermaking wastes, contaminated soils, and sediments at and from OU1. EPA also excavated some materials that were located on the Panelyte Property and that were contaminated with papermaking wastes.

13. The final remedy for OU1, which will be set forth in a Record of Decision (ROD), may address PCB contamination on the Panelyte Property or may otherwise involve the Panelyte Property for implementation of the remedy. Otherwise, the OU1 ROD will not address

the Panelyte Property and EPA does not currently envision requiring or implementing response actions at the Panelyte Property.

14. Currently, the Panelyte Property is unoccupied but is owned by the State of Michigan Land Bank Fast Track Authority.

15. Purchaser desires that the Panelyte Property and OU1 be redeveloped for recreational and/or commercial purposes as part of broader redevelopment efforts for the surrounding area, which is commonly referred to as Portage Creek Corridor. The City of Kalamazoo described this redevelopment effort in the May 2009 *Portage Creek Corridor Reuse Plan*. With respect to the Panelyte Property and OU1, the goals of the redevelopment are to ensure environmental protectiveness at the parcels, to encourage productive reuse, and to incorporate accessibility and economic connectivity with the community. At appropriate times, Purchaser accumulates properties in this area for the Portage Creek Corridor redevelopment, and at this time desires to obtain the Panelyte Property in order to further that effort. Purchaser currently desires to market the Panelyte Property to other entities who will in turn develop the Panelyte Property.

16. Purchaser represents, and for the purposes of this Settlement Agreement EPA relies on those representations, that Purchaser's involvement with the Panelyte Property and the Site has been limited to the following:

- A. *-city took tax deeds/held title to the Panelyte Property from 9/15/78-10/24/78 deeds suggest tax or lien foreclosure*
- B. *-city took tax deeds/held title to the Panelyte Property in 1988-1992; At some point between 1991-1993, City deeded property to state and/or state independently took title to property. (I have now seen a 5/7/91 from State Treasurer to State; also a reference to a 2/13/93 deed from City to State)*
- C. *-1992 – City demolishes main Panelyte building, apparently under police power. Disposes of asbestos and PCB-contaminated rubble off-site. Disposes of other rubble on-site*
- D. EPA issued to Purchaser Brownfield Assessment Grant BF00E03401-1. Pursuant to this grant, Purchaser conducted certain studies related to the Panelyte Property. *Probably needs elaboration*

-any other involvement?

IV. ACCESS

17. Commencing upon the date that it acquires title to the Panelyte Property, Purchaser shall provide EPA and its representatives, contractors, subcontractors and all other persons performing response actions at the Panelyte Property under EPA oversight an irrevocable right at all reasonable times to the Panelyte Property to:

- A. assess Purchaser's Compliance with this Settlement Agreement;
- B. prepare for, perform or oversee the remedy set forth in the OU1 ROD;
- C. conduct investigations regarding contamination at or near the Panelyte Property or OU1; or
- D. assess the need for, planning, or implementing additional response actions at or near the Panelyte Property or OU1.

18. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation.

V. RESTRICTIONS AND OTHER CONDITIONS

Commencing upon the date that it acquires title to the Panelyte Property:

19. Purchaser shall refrain from using the Panelyte Property in any manner that EPA determines will interfere with or adversely affect the implementation, integrity, or protectiveness of the remedy set forth in the OU1 ROD.

20. Purchaser shall prohibit use of contaminated groundwater at the Panelyte Property;

21. Purchaser shall prohibit activities which could result in exposure to contaminants in subsurface soils and groundwater at the Panelyte Property;

22. Purchaser shall ensure that any buildings or other structures on the Panelyte Property:

- A. will not be constructed in a manner which could interfere with the remedy selected in the OU1 ROD; and
- B. will be constructed in a manner which will minimize potential risk of inhalation of or other contact with contaminants.

23. Purchaser intends that the redevelopment of the Panelyte Property will be done in a way that minimizes environmental impact. To that end, Purchaser will develop a reuse framework that ensures redevelopment of the Panelyte Property in a manner that emphasizes recycling, energy efficiency and conservation, use of renewable energy resources, sustainable operations, and recycled materials. The reuse frame work shall ensure that, to the maximum extent practicable, the Panelyte Property is developed in accordance with Green Development principles identified in Exhibit 2. Within 180 days of taking title to the Panelyte Property, Purchaser will present the reuse frame work to City of Kalamazoo for adoption into the City Code of Ordinances.

24. In order to increase and protect ecological values on the Panelyte Property and provide corresponding health, environmental, recreational and aesthetic benefits to local residents and to users of the Panelyte Property, Purchaser shall, except as necessary to be

consistent with the OUI ROD, develop and maintain a 50 foot wide natural vegetated buffer along the portion of Portage Creek located on the Panelyte Property. In this riparian corridor and for wetlands on the Panelyte Property, Purchaser shall:

- A. ensure that a 50 foot vegetated buffer are protected by environmental restrictive covenants and easements that run with the land;
- B. ensure that streambanks are not hardened, through the placement of rip-rap, sheetwall, or otherwise;
- C. ensure that the width of Portage Creek is not decreased through the addition of fill material to Portage Creek or its floodplains;
- D. allow access to state and federal agencies and their contractors to establish, maintain, and enhance in-stream and bank restoration, including “pool and riffle” structures, in any portion of Portage Creek adjacent to the portions of the Panelyte Property; and
- E. ensure that any trails developed on the Panelyte Property are built outside the 50 foot vegetated buffer, but with occasional spur trails the water’s edge allowed.

25. The Purchaser desires to enhance the connectivity between the Panelyte Property and the local residents. Purchaser shall, to the maximum extent practicable, comply with this Settlement Agreement when implementing projects or construction activities to improve connections to neighborhoods, such as trails or bridges.

26. Community Involvement. Within 90 days after taking title to the Panelyte Property, Purchaser will use best efforts to establish an Advisory Council comprised of local residents to help advise Purchaser on the redevelopment of the Panelyte Property. Purchaser shall utilize an inclusive planning process for the Panelyte Property which will involve the Advisory Council and which will give local residents a meaningful opportunity to comment on matters related to the redevelopment of the Panelyte Property.

VI. PROPRIETARY CONTROLS

27. Purchaser shall, with respect to the Panelyte Property, execute and record, in accordance with the procedures of this Paragraph, proprietary controls that run with the land and that:

- A. grant a right of access to conduct any activity regarding this Settlement Agreement, including those activities listed in Section IV; and
- B. grant the right to enforce the restrictions and other conditions set forth in Section V.

28. The proprietary controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, Purchaser, and other appropriate grantees. Proprietary controls granted to persons other than the United States must include a designation that EPA is a “third-party beneficiary” allowing EPA to maintain the right to enforce the proprietary controls without acquiring an interest in real property.

29. Purchaser shall, within 30 days after recording the proprietary controls, or such other deadline approved by EPA, provide to the United States, and to all grantees of the proprietary controls, certified copies of the recorded proprietary controls showing the clerk's recording stamps.

30. Purchaser shall not Transfer the Panelyte Property until it has executed and recorded all proprietary controls regarding the Panelyte Property in accordance with this Section.

VII. NOTICE TO SUCCESSORS-IN-TITLE AND TRANSFERS OF INTEREST

31. Purchaser shall, within 60 days after acquiring title to the Panelyte Property or an interest in the Panelyte Property, submit for EPA approval a notice to be filed regarding the Panelyte Property in the appropriate land records for Kalamazoo County, Michigan. The notice must:

- A. include a proper legal description of the Panelyte Property; and
- B. provide notice to all successors-in-title that:
 - i. the Panelyte Property is subject to this Settlement Agreement;
 - ii. the Panelyte Property is adjacent to OU1, which is part of the Site and on the NPL;
 - iii. the Panelyte Property contains hazardous substances, including but not limited to hazardous substances related to OU1;
 - iv. that EPA has or will select a remedy in a ROD for OU1; and
 - v. that implementation of the remedy selected in the OU1 ROD may address hazardous substances on the Panelyte Property or may otherwise occur on the Panelyte Property.

32. Purchaser shall record the notice required by Paragraph 31 within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

33. Purchaser shall, prior to entering into a contract to transfer the Panelyte Property or an interest in the Panelyte Property, or 60 days prior to such transfer, whichever is earlier:

- A. Provide a copy of this Settlement Agreement to the proposed transferee; and
- B. Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.

34. Purchaser shall not transfer the Panelyte Property or an interest in the Panelyte Property without first securing EPA's approval of, and transferee's consent to, an agreement that:

- A. is enforceable by Purchaser and EPA; and
- B. requires the transferee to comply with this Settlement Agreement.

35. In the event of any transfer of the Panelyte Property or an interest in the Panelyte Property, unless EPA otherwise consents in writing, Purchaser shall continue to comply with its obligations under the Settlement Agreement.

36. Purchaser shall ensure that assignees, successors in interest, lessees, and sublessees of the Panelyte Property shall comply with this Settlement Agreement and that subsequent leases, subleases, assignments, or transfers of the Panelyte Property or an interest in the Panelyte Property are consistent with this Settlement Agreement.

VIII. DUE CARE/COOPERATION

37. Purchaser shall exercise due care at the Panelyte Property with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. In the event Purchaser becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants, or contaminants at or from the Panelyte Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

38. In 2010, Purchaser created a Due Care Plan for the Panelyte Property. Purchaser shall implement, and update as necessary, the Due Care Plan for any part of the Panelyte Property owned by Purchaser. Upon transfer of its interest in a part of the Panelyte Property, the due care obligations of this Section shall be fulfilled by the transferee with respect to that part of the Panelyte Property.

39. Purchaser recognizes that the implementation of response actions at or related to OU1 may occur at or address contamination on the Panelyte Property, and Purchaser further recognizes that response actions may interfere with Purchaser's use of the Panelyte Property. Purchaser agrees to cooperate fully with EPA in the implementation of response actions related to OU1, including response actions on the Panelyte Property, and further agrees not to interfere with such response actions. Such response actions may include, but are not necessarily limited to, remediation of contamination located on the Panelyte Property and/or placement on the Panelyte Property of components of the remedy set forth in the OU1 ROD. Purchaser consents to such response action being conducted on the Panelyte Property by EPA and its representatives, contractors, subcontractors and all other persons performing response actions at the Panelyte Property or OU1.

IX. CERTIFICATION

40. By entering into this Settlement Agreement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees,

contractors, and agents which relates in any way to Existing Contamination or any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Panelyte Property and to its qualification for this Settlement Agreement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Panelyte Property. If the United States determines that information provided by Purchaser is not materially accurate and complete, the Settlement Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

X. UNITED STATES' COVENANT NOT TO SUE

41. Subject to the Reservation of Rights in Section XI, the United States covenants not to sue or take any other civil or administrative action against Purchaser for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with respect to Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of all obligations under this Settlement Agreement.

XI. RESERVATION OF RIGHTS

42. The covenant not to sue set forth in Section X above does not pertain to any matters other than those expressly specified in Section X (United States' Covenant Not to Sue). The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Purchaser with respect to all matters not expressly included within the United States' Covenant Not to Sue in Section X. Notwithstanding any other provision of the Settlement Agreement, the United States reserves all rights against Purchaser with respect to:

- A. liability for failure by Purchaser to meet a requirement of this Settlement Agreement;
- B. any liability resulting from past or future releases of hazardous substances, pollutants, or contaminants, at or from the Panelyte Property caused or contributed to by Purchaser, its successors, assignees, lessees, or sublessees;
- C. any liability resulting from exacerbation by Purchaser, its successors, assignees, lessees or sublessees, of Existing Contamination;
- D. any liability resulting from the release or threat of release of hazardous substances, pollutants, or contaminants, at the Panelyte Property after the Effective Date, not within the definition of Existing Contamination;
- E. criminal liability;
- F. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment;

- G. liability for violations of local, State or federal law or regulations; and
- H. liability related to OU1 or the Site.

43. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

44. Nothing in this Settlement Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Settlement Agreement.

45. Nothing in this Settlement Agreement is intended to limit the right of EPA to undertake future response actions at the Panelyte Property, OU1 or the Site to seek to compel parties other than Purchaser to perform or pay for response actions at the Panelyte Property, OU1 or the Site. Nothing in this Settlement Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Purchaser acknowledges that it is purchasing property where response actions may be required.

XII. PURCHASER'S COVENANT NOT TO SUE

46. In consideration of the United States' Covenant Not To Sue in Section X of this Settlement Agreement, Purchaser hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Panelyte Property or this Settlement Agreement, including but not limited to, any direct or indirect claims for reimbursement from the EPA Hazardous Substance Superfund, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law related to the Panelyte Property, or any claims arising out of response activities at the Panelyte Property, including claims based on EPA's oversight of such activities or approval of plans for such activities.

47. Purchaser reserves, and this Settlement Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of Purchaser's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XIII. PARTIES BOUND/TRANSFER OF COVENANT

48. This Settlement Agreement shall apply to and be binding upon the United States, and shall apply to and be binding upon Purchaser, its officers, directors, and employees. The United States' Covenant Not to Sue in Section X and Contribution Protection in Section XX shall apply to Purchaser's officers, directors, or employees, to the extent that the alleged liability

of the officer, director, or employee is based on its status and in its capacity as an officer, director, or employee of Purchaser, and not to the extent that the alleged liability arose independently of the alleged liability of Purchaser. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

49. Notwithstanding any other provisions of this Settlement Agreement, all of the rights, benefits and obligations conferred upon Purchaser under this Settlement Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

50. Purchaser agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Settlement Agreement.

51. In the event of an assignment or transfer of the Panelyte Property or an assignment or transfer of an interest in the Panelyte Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Settlement Agreement except as EPA and the assignor or transferor agree otherwise and modify this Settlement Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Panelyte Property, the assignee or transferee must consent in writing to be bound by the terms of this Settlement Agreement including but not limited to the certification requirement in Section IX in order for the Covenant Not to Sue in Section X to be available to that party. The Covenant Not to Sue in Section X shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

XIV. DISCLAIMER

52. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Panelyte Property or related to OU1 nor constitutes any representation by EPA that the Panelyte Property or areas included in OU1 are fit for any particular purpose.

XV. DOCUMENT RETENTION

53. Purchaser agrees to retain and make available to EPA all business and operating records, contracts, studies and investigations, and documents relating to operations at the Panelyte Property for at least ten years following the Effective Date unless otherwise agreed to in writing by the Parties. At the end of ten years, Purchaser shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XVI. PAYMENT OF COSTS

54. If Purchaser fails to comply with the terms of this Settlement Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement Agreement or otherwise obtain compliance.

XVII. NOTICES AND SUBMISSIONS

55. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Agreement shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Purchaser shall be addressed to:

..... *(Purchaser to provide)*

Submission to EPA shall be addressed to:

Michael Berkoff
EPA Remedial Project Manager
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

XVIII. EFFECTIVE DATE

56. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to Purchaser that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

XIX. TERMINATION

57. If any Party believes that any or all of the obligations under Section IV are no longer necessary for the implementation of response actions at the Panelyte Property, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

XX. CONTRIBUTION PROTECTION

58. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to Existing Contamination, except for the State.

59. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

60. Purchaser agrees that with respect to any suit or claim brought by it for matters related to this Settlement Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

61. Purchaser agrees that with respect to any suit or claim for matters related to this Settlement Agreement it will notify the United States in writing within 10 days of service of the complaint upon it.

XXI. EXHIBITS

62. Exhibit 1 shall mean the description of the Panelyte Property which is the subject of this Settlement Agreement.

63. Exhibit 2 shall mean the Green Development Standards.

XXII. PUBLIC COMMENT

64. This Settlement Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Susan Hedman
Regional Administrator
EPA Region 5

[DATE]

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

[Assistant Attorney General]
Environment and Natural Resources Division
U.S. Department of Justice

[Date]

IT IS SO AGREED:

[Name]

[Date]